

TERI B. HIMEBAUGH ESQUIRE
IDENTIFICATION NUMBER: 53603
220 STALLION LANE
SCHWENKSVILLE, PA. 19473
(610) 287-0216

ATTORNEY FOR PLAINTIFF

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COREY WHITE	:	CIVIL ACTION
	:	NO. 02-4066
V.	:	
	:	
POLICE OFFICER BLOCKER	:	
(BADGE #4553)	:	
1515 ARCH STREET, 15TH FLOOR	:	
PHILADELPHIA, PA. 19102	:	
AND	:	
POLICE OFFICER IANNAcone	:	
(BADGE #2281)	:	
1515 ARCH STREET, 15TH FLOOR	:	
PHILADELPHIA, PA. 19102	:	
AND	:	
POLICE OFFICER ROMAN	:	
(BADGE # 4035)	:	
1515 ARCH STREET, 15TH FLOOR	:	
PHILADELPHIA, PA. 19102	:	
AND	:	
POLICE OFFICER JOHNSON	:	
(BADGE # 1203)	:	
1515 ARCH STREET, 15TH FLOOR	:	
PHILADELPHIA, PA. 19102	:	
AND	:	
POLICE OFFICER MCDONALD	:	
(BADGE # 7431)	:	
1515 ARCH STREET, 15TH FLOOR	:	
PHILADELPHIA, PA. 19102	:	
AND	:	
POLICE OFFICER JANE DOE	:	
1515 ARCH STREET, 15TH FLOOR	:	
PHILADELPHIA, PA. 19102	:	

SECOND AMENDED COMPLAINT

1. Plaintiff, Corey White, is an adult citizen of the Commonwealth of Pennsylvania currently incarcerated at SCI Graterford, P.O. Box 244, Graterford, Pennsylvania 19473.

2. Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe were, at all material times, employed as police officers with the City of Philadelphia Police Department. They are being sued both individually and in their official capacities as officers, agents and/or employees of the City of Philadelphia.

3. At all material times, Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, acted within the course and scope of their employment, under color of state law and pursuant to the customs, policies and practices of the City of Philadelphia Police Department and the City of Philadelphia.

4. This Court has jurisdiction over the federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343 and jurisdiction over the state law claims pursuant to the principals of pendant and ancillary jurisdiction.

5. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) because the cause of action upon which the complaint is based arose in the City of Philadelphia, which is in the Eastern District of Pennsylvania.

6. On or about February 6, 2002 Plaintiff, Corey White was at 60th Street, between Greenway Avenue and Kingessing Avenue, looking at two bicycles that were for sale.

7. A gray colored car pulled up and a white male jumped out of the car and started to run toward Plaintiff.

8. In that he was wanted for a parole violation, Plaintiff fled.

9. Plaintiff was caught by Defendant, Police Officer Ianaccone.

10. Defendant, Police Officer Blocker then approached Plaintiff with his gun drawn and told Plaintiff that if he moved, he would be shot.

11. Without legal justification or cause, Defendant, Police Officer Ianaccone picked up a shovel from the backyard that they were in and proceeded to strike Plaintiff numerous times with the shovel on Plaintiff's back and head.

12. To avoid further beating, Plaintiff got up and began to run away from Defendant, Police Officer Ianaccone, who was still wielding the shovel.

13. Plaintiff ran a short distance into a driveway where he was apprehended by Defendants, Police Officers Roman and McDonald.

14. Defendant, Police Officers Roman and McDonald threw Plaintiff to the ground where they proceeded to beat and kick him.

15. Defendants, Officers Ianaccone, Blocker and Jane Doe, joined in the beating and kicking of the Plaintiff until Plaintiff lapsed into unconsciousness.

16. Plaintiff awoke in the emergency room of Misericordia Hospital where he was treated for injuries to his head, back ribs and kidneys.

17. Plaintiff was charged with aggravated assault, simple assault, recklessly endangering another person and resisting arrest.

18. Plaintiff pled guilty to simple assault and resisting arrest. All other charges were dismissed.

19. As a direct and proximate result of the aforementioned actions of Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, Plaintiff, Corey White, suffered severe physical pains, disability, mental anguish and emotional distress, and he will continue to suffer same for an indefinite time in the future, to his great detriment and loss.

20. As a direct and proximate result of the aforementioned actions of Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, Plaintiff, Corey White, has and will hereinafter incur other financial expenses and losses.

COUNT I - 42 U.S.C. § 1983
EXCESSIVE FORCE
PLAINTIFF V. POLICE OFFICERS IANNAZONE, BLOCKER, ROMAN, JOHNSON,
MCDONALD AND DOE

21. Paragraphs 1 through 20 are incorporated herein by reference, as though each were fully set forth at length below.

22. As aforesaid, Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, acting within the course and scope of their employment, under color of state law and pursuant to the customs, policies and practices of the City of Philadelphia, deprived Plaintiff of his rights, privileges and immunities under the laws and Constitutions of the United States, in particular, the right to be free from the use of excessive force, which action violated Plaintiff's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States and the laws of the United States and of the Commonwealth of Pennsylvania.

23. Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, intentionally and maliciously humiliated, embarrassed, threatened, accused and insulted, Plaintiff, Corey White, and used their position of authority in an illegal and improper manner to punish the Plaintiff, by engaging in the above described actions, all of which violated Plaintiff's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States, and the laws of the United States and of the Commonwealth of Pennsylvania.

24. Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, intentionally and maliciously assaulted and battered, Plaintiff, Corey White, and placed him in fear of imminent bodily harm without just cause or provocation by the above described actions, all of which violated Plaintiff's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States and the laws of the United States and of the

Commonwealth of Pennsylvania.

25. As a direct and proximate result of the malicious, intentional and/or reckless actions of Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, Plaintiff, Corey White suffered the injuries that are described above.

26. The above-described actions of Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, in their individual capacities, were so malicious, intentional and reckless and displayed such a reckless indifference to the Plaintiff's rights and well being, that the imposition of punitive damages is warranted.

WHEREFORE, pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff, Corey White, demands compensatory and punitive damages against Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, jointly and/or in an amount in excess of One Hundred Thousand (\$100,000.00) Dollars, plus interest, costs, attorney's fees and other appropriate relief.

COUNT II - 42 U.S.C. § 1983
CONSPIRACY
PLAINTIFF V. POLICE OFFICERS IANNAZONE, BLOCKER, ROMAN, JOHNSON,
MCDONALD AND DOE

27. Paragraphs 1 through 26 are incorporated herein by reference, as though each were fully set forth at length below.

28. Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, entered into an agreement and/or reached a meeting of their minds to violate Plaintiffs Constitutional Rights: specifically by using excessive force to cause Plaintiff harm.

29. As detailed above, defendants, entered into a conspiracy to harm the Plaintiff, Corey White, and deny the Plaintiff of his constitutional rights and privileges under the Constitution of the United States and the laws of the United States and of the Commonwealth

of Pennsylvania.

30. As detailed above, defendants, performed overt acts in furtherance of the conspiracy.

31. As detailed above, the conspiracy directly and proximately resulted in harm to the Plaintiff, Corey White, including the deprivation of his rights and privileges under the Constitution of the United States and the Laws of the Commonwealth of Pennsylvania

32. As a direct and proximate result of the malicious, intentional and reckless actions of the defendants in carrying out the conspiracy to violate the Plaintiff's rights, the Plaintiff suffered injuries, which are described above.

33. The above described actions of the Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, in their individual capacities were so malicious, intentional, and reckless and displayed such a reckless indifference to the Plaintiff's rights and well-being that the imposition of punitive damages is warranted.

WHEREFORE, pursuant to 42 U.S.C. §§1983 and 1988, Plaintiff, Corey White, demands compensatory and punitive damages against, Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, jointly and/or severally, in an amount in excess of One Hundred Thousand (\$100,000.00) Dollars, plus interest, costs, attorney's fees and other appropriate relief.

COUNT III– 42 U.S.C. §1983
BYSTANDER LIABILITY
PLAINTIFF V. POLICE OFFICERS IANNAZONE, BLOCKER, ROMAN, JOHNSON,
MCDONALD AND DOE

34. Paragraphs 1 through 33 are incorporated herein by reference, as though each were fully set forth at length below.

35. The plaintiff, Corey White, believes and therefore avers that Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, encouraged and stood idly by while excessive force was used against the Plaintiff, which deprived the Plaintiff of his constitutional rights and privileges under the Constitution of the United States.

36. The Plaintiff believes and therefore avers that Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, encouraged and failed to prevent their fellow officers from using excessive force against the plaintiffs, and therefore deprived the Plaintiff, Corey White, of his rights under the Fourth and Fourteenth Amendments.

37. As detailed above, Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe failed to fulfill their obligation to intervene when they had an independent and affirmative duty to prevent the use of excessive force upon the Plaintiff by their fellow officers.

38. As detailed above, by encouraging and failing to intervene, Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe effectively assisted their fellow officer in using excessive force against the Plaintiff, and therefore deprived the Plaintiffs of his constitutional rights and privileges under the Constitution of the United States, more specifically the Fourth and Fourteenth Amendments.

39. The above described actions of the Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, in their individual capacities were so malicious, intentional, and reckless and displayed such a reckless indifference to the Plaintiff's rights and well-being that the imposition of punitive damages is warranted.

WHEREFORE, pursuant to 42 U.S.C. §1983, Plaintiff, Corey White, demands compensatory and punitive damages against Defendants, Police Officers Iannacone, Blocker,

Roman, Johnson, McDonald and Doe, jointly and/or severally in their official capacities, in an amount in excess of One Hundred Thousand (\$100,000.00) Dollars, plus interest, costs, attorney's fees and other appropriate relief.

COUNT IV
ASSAULT AND BATTERY
PLAINTIFF V. POLICE OFFICERS IANNAONE, BLOCKER, ROMAN, JOHNSON,
MCDONALD AND DOE

40. Paragraphs 1 through 39 are incorporated herein by reference, as though each were fully set forth at length below.

41. Plaintiff believes and therefore avers that the Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, wrongfully and unlawfully assaulted and battered the plaintiff, as more particularly described hereinabove. Plaintiff, Corey White, specifically complains of the conduct of Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, in striking him with a shovel and otherwise kicking and beating him.

42. The above-described actions of defendants placed the Plaintiff in the reasonable fear of imminent bodily harm and resulted in the plaintiff being unlawfully and improperly assaulted and abused against his will.

43. As a direct and proximate result of the malicious, intentional and/or reckless actions of the Defendants, Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, the plaintiff suffered injuries that are described herein.

44. The above-described actions of Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, were so malicious, intentional, reckless and displayed

such a reckless indifference to the plaintiffs' rights and well being, that the imposition of punitive damages is warranted.

WHEREFORE, Plaintiff, Corey White, demands compensatory and punitive damages against Defendants, Police Officers Iannacone, Blocker, Roman, Johnson, McDonald and Doe, jointly and/or severally, for the common law torts of assault and battery, in an amount in excess of One Hundred Thousand (\$100,000.00) Dollars plus cost, interest, attorney's fees and delay damages.

BY: _____
TERI B. HIMEBAUGH, ESQUIRE
ATTORNEY FOR PLAINTIFF

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POLICE OFFICER McDONALD	:	
POLICE OFFICER JANE DOE	:	

**PLAINTIFF'S MOTION FOR LEAVE
TO FILE AN AMENDED COMPLAINT**

Plaintiff, Corey White, by and through his counsel, Teri B. Himebaugh, Esquire, hereby moves this Honorable Court to grant Plaintiff leave to file an Amended Complaint, and respectfully submits this Motion in support thereof and avers as follows:

1. Plaintiff commenced this action pro se.
2. Counsel was subsequently appointed to represent Plaintiff by the Court.
3. A the Rule 16 Conference, counsel for Plaintiff was directed by the Court to draft and file the instant Second Amended Complaint to codify, clarify and better articulate the claims raised by the Plaintiff in his pro se pleading.
4. Plaintiff's Second Amended Complaint does not include any newly named Defendants and Plaintiff specifically withdraws his claims against the previously named Defendant, City of Philadelphia.

5. Plaintiff has not changed any of the factual allegations regarding the claims against the previously named defendants.

6. Plaintiff has not added any causes of action in the instant Second Amended Complaint. Rather, Plaintiff has withdrawn several claims/causes of action that did not legally apply based upon the facts presented.

7. Defendants therefore would not be prejudiced by the granting of this Motion.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant his Motion for Leave to File Plaintiff's Second Amended Complaint, a copy of which is appended hereto.

Respectfully submitted,

Teri B. Himebaugh, Esq.
Attorney for Plaintiff, Corey White

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff, Corey White's Motion for Leave to File a Second Amended Complaint was served via First Class mail, postage prepaid upon the following:

Robin Arnold, Esq.
Assistant City Solicitor
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

DATE: _____

TERI B. HIMEBAUGH, ESQUIRE

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POLICE OFFICER JANE DOE	:	

ORDER

AND NOW, this day of 2003, it is hereby ORDERED and DECREED that Plaintiff's Motion for Leave to Amend the Complaint is hereby **GRANTED**.

Plaintiff's Second Amended Complaint, which was previously forwarded to the Court along with the Motion, shall be filed with the Clerk of Courts and shall be Answered by the Defendants within the time limits permitted under the Federal Rules of Civil Procedure.

BY THE COURT:

The Honorable Norma Shapiro, J.